



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

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NOTICE OF INTENDED REGULATORY ACTION STATE WATER CONTROL BOARD - WATER QUALITY STANDARDS September 18, 2006

Notice is hereby given in accordance with §9-6.14:7.1 of the Code of Virginia that the State Water Control Board intends to consider amending regulations entitled: 9 VAC 25-260-5 et seq. Water Quality Standards. Statutory authority for promulgation these amendments can be found in §62.1-44.15(3a) of the Code of Virginia.

PURPOSE: The subject matter of the rulemaking will include updated numerical and narrative criteria to protect designated uses. The goal is to provide the citizens of the Commonwealth with a technical regulation that is protective of water quality in surface waters, reflects recent scientific information, reflects agency procedures and is reasonable and practical.

The intent of this rulemaking is to protect designated and beneficial uses of state waters by adopting regulations that are technically correct, necessary and reasonable. These standards will be used in setting Virginia Pollutant Discharge Elimination System Permit limits and for evaluating the waters of the Commonwealth for inclusion in the Clean Water Act 305(b) report and on the 303(d) list. Waters not meeting standards will require development of a Total Maximum Daily Load under the Clean Water Act at 303(e).

This rulemaking is needed because the last triennial review was completed in February 2004 and new scientific information is available to update the water quality standards. Changes to the regulation are also needed to improve permitting, monitoring and assessment programs. In addition, the agency has to fulfill the legal mandates for a three-year review under the Code of Virginia §62.1-44.15(3a) and federal regulations 40 CFR 131.

NEED: The rulemaking is essential to the protection of health, safety or welfare of the citizens of the Commonwealth. Proper water quality standards protect water quality and living resources of Virginia's waters for consumption of fish and shellfish, recreational uses and conservation in general.

It should be noted that all sections of the regulation are open for comment during this mandated triennial review and a revision, addition or deletion could potentially occur in any section of the regulation.

SUBSTANCE: The existing regulation will be changed to reflect new scientific information and to clarify the regulation. Changes will also be proposed to improve implementation of these standards in Virginia Pollutant Discharge Elimination System permits and in monitoring and assessments of surface waters. Some of the changes will be to numerical and narrative criteria, use designations, classifications, site specific or special standards, stream descriptions, antidegradation and implementation procedures such as mixing zones, variances and assessment procedures. For a list of specific issues under consideration, please notify Elleanore Daub using the contact information in this notice or go to the Town Hall web site to view the agency statement at:

<http://www.townhall.state.va.us/Stage/ViewStage.cfm?Stage=3760>

ALTERNATIVES: One alternative is to keep the current water quality standard regulation unchanged or to delay the triennial review. This was not chosen since the state is mandated to review the water quality standards regulation every three years and another review is due. Also, many issues have been identified by monitoring, assessments and permitting staff that need to be addressed as soon as possible to meet other agency Clean Water Act deadlines (e.g. 2008 Clean Water Act 305(b) report). Each issue may have a more cost effective alternative or any individual issue may be accepted or rejected. The Department will solicit public input during the review and consider other alternatives and issues presented by the public, which also meet the goals of the regulation and of the agency.

PUBLIC PARTICIPATION: The Board is seeking comments on the intended regulatory action, including but not limited to 1) ideas to assist in the development of a proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) impacts of the regulation on farm and forest land preservation. The Board is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so at the public meeting, by mail to the Department of Environmental Quality (c/o Elleanore Daub), P.O. Box 10009, Richmond, VA 23240-0009, or by email to emdaub@deq.virginia.gov or by fax at (804) 698-4116. Written comments (including email) must include the name and address of the commenter. In order to be considered comments must be received by November 17, 2006. Questions may also be directed to Elleanore Daub at phone number (804) 698-4111.

A public meeting will be held on October 12, 2006 at the Department of Environmental Quality Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA, at 2 p.m.

The meeting will be held at a public facility believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facilities should contact Elleanore Daub at the address above, or by telephone at (804) 698-4111, or 1-800-592-5482 or TDD (804) 698-4261. Persons needing interpreter services for the deaf must notify Ms. Daub by September 29, 2006.

The agency intends to hold a public hearing on the proposed regulation after publication in the Virginia Register. This has not been scheduled yet.

PARTICIPATORY APPROACH: The Board is using the participatory approach to develop a proposal. This will involve the formation of an ad hoc advisory committee to assist in the development of the proposal. Persons interested in assisting in the development of a proposal should notify the department contact person by the end of the comment period and provide their name, address, phone number, email address and the organization you represent (if any). Any persons who want to be on the advisory committee are encouraged to attend the public meeting mentioned above. The primary function of the advisory committee is to develop recommended regulation amendments for Department consideration through the collaborative approach of regulatory negotiation and consensus. Multi-applications from a single company, organization, group or other entity count as one for purposes of making the decision specified in the preceding sentence. Notification of the composition of the advisory committee will be sent to all applicants.

Ad hoc advisory meetings are scheduled for December 1, 2006, February 21, March 21, April 18 and May 9, 2007.

CONTACT: Elleanore Daub, Department of Environmental Quality at the address, email and phone number above.